

AF09-D688

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

Montana Sup. Ct. Justices
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Helena, MT 59620

FILED

Case Number: AF 09-0688

APR 06 2017

March 30, 2017

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Re: Proposed changes to Model Rule of Professional Conduct 8.4 - LGBT people should have equal access and representation in the legal system in Montana

To the Honorable Supreme Court Justices of Montana:

As a lawyer, member of the Montana Bar, and member of the LGBT community, I applaud the American Bar Association's adoption of Model Rule of Professional Conduct, Rule 8.4(g), and applaud the Montana State Bar for submitting this rule to the Montana Supreme Court for its consideration. It is time to adopt as a policy in Montana a model rule that would protect LGBT people and members of other marginalized groups by prohibiting lawyers from engaging in conduct discriminating against them. As with any other service, an attorney should not be allowed to turn someone away who needs help just because that person is lesbian, gay, bisexual, or transgender. All Montanans, including LGBT people, deserve equal access to justice and representation in our courts.

The American Bar Association conducted a thorough review and debate of Model Rule 8.4(g). Through its analysis, deliberations, and review of public comment it developed and approved the language now being considered for adoption in Montana.

In its support of the rule change, the ABA Commission on Women in the Profession stated:

The Commission believes strongly that this change is vitally needed. As stated poignantly at the public hearing by law student member Matt Mecoli, "We, the future members of this profession, were frankly surprised to discover that an antidiscrimination provision was not already in the black letter of our rules. There is no doubt in our mind that any discrimination on any basis is inherently unethical and should be treated as such. ... If anything, we as a profession should hold ourselves to the highest levels of ethical conduct and our rules should demonstrate that commitment.

(http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_model_rule%208_4_comments/commission_on_women_final_comment.authcheckdam.pdf)

Outcry over the adoption of ABA Model Rule 8.4(g) that cites infringement on freedoms of speech or religion evidence the real need for rule 8.4(g). Harassment and discriminatory conduct by lawyers in the practice of law has always been prohibited in the comments to Rule 8.4 in the Model Rules of Professional Conduct. The comments and proposed legislation opposing the inclusion of this rule as part of the norms of legal practice in Montana demonstrate how important it is to adopt Rule 8.4(g). Legal practice free from bias is and should be standard operating

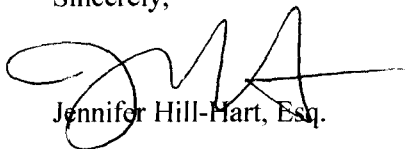
procedures for attorneys. Anything less is in conflict with the ABA Model Rules of Professional Conduct and professional conduct unbefitting of our respected Bar.

As to the technical construction of the rule, the language and scope are clear. Concern over the type of conduct prohibited is moot as “harassment” and “discrimination” are both clearly defined in the amendment itself as well as in law. In addition, the categories of protected groups listed in the proposed model rule are consistent with current jurisprudence in this area of law. Finally, the scope of the rule is appropriate as it has been a comment to Rule 8.4 for many years already and it is appropriate to make it black letter law at this time to ensure all classes of people are protected from unethical behavior by an attorney. Given the extreme outcry over its adoption *that includes* even legislative efforts to thwart its inclusion, there is clearly a need to ensure attorneys are aware of where their freedoms of speech and religion can create an affront to the ethical practice of law.

Former Montana Supreme Court Justice William Leaphart corrected a common misinterpretation of the rule in his March 2, 2017 letter to the editor in the Helena Independent Record. Written in response to one submitted by Montana legislators, former Justice Leaphart clarified that the rule does not prevent attorneys from “adhering to their religion, teaching law school classes, speaking at public events or serving in a religious congregation,” only that if they need to discriminate or harass in order to practice their faith, they merely cannot do so while practicing law. I urge the present Montana Supreme Court to acknowledge the same conclusion. Please accept the proposed changes to rule 8.4 that would prohibit conduct that a lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. No one seeking legal services should be treated with bias and hostility simply because of who they are.

Thank you for your thoughtful consideration of this rule and its impact on access to justice in Montana.

Sincerely,



Jennifer Hill-Hart, Esq.